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Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

ANN ANASTASIA, et al.,

Petitioners,

vs.

COSMOPOLITAN NATIONAL BANK OF CHICAGO, etc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, Ann Anastasia, Ozzie Glass, Jesse and Edda Smith, and June Jackson, individually and on behalf of all others similarly situated, pray that a writ of certiorari issue to the United States Court of Appeals for the Seventh Circuit to review the judgment of that Court entered on September 30, 1975, affirming the order of the Honorable Frank J. McGarr of the United States District Court for the Northern District of Illinois, Eastern Division, dismissing this cause.

OPINIONS BELOW

The order and opinion of Judge McGarr of the United States District Court for the Northern District of Illinois is unreported and is attached hereto as Appendix A. The opinion of the United States Court of Appeals for the Seventh Circuit, not yet reported, is attached as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on September 30, 1975. Before filing, the opinion was circulated to all judges of the Court in regular active service. A majority voted against a rehearing *en banc,* but Judges Luther M. Swygert and John Paul Stevens voted for such a rehearing. (Appendix B, at 19 n. 17). Because of this vote the petitioners chose not to request a rehearing, but instead have petitioned directly to this Court.

This petition for certiorari was filed with this Court within 90 days of the date of the Seventh Circuit's judgment. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the actions of the defendant hotel keepers who seized and detained the personal property of their residents pursuant to the authority of the Illinois Innkeepers' Lien Law, *Ill. Rev. Stat.*, ch. 82, §57 and ch. 71, §2, are "state action" within the meaning of the Fourteenth Amendment to the United States Constitution or action "under color of law" within the meaning of 42 U.S.C. §1983.

2. Whether the powers and functions the State of Illinois has allowed hotel proprietors to assume in enforcing the innkeepers' lien are inherently governmental in nature and thus circumscribed by constitutional standards.

3. Whether through the enactment of the Innkeepers' Lien Law and other statutes, which expand the power of hotels, approve and authorize the enforcement of the innkeepers' lien, and grant hotels protected status and aid, the State of Illinois has so significantly involved itself in the actions of hotel proprietors that their conduct must be circumscribed by constitutional standards.

4. Whether the Illinois Innkeepers' Lien Laws violate the Due Process Clause of the Fourteenth Amendment and the Fourth Amendment's prohibition of unreasonable searches and seizures.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in part:

> . . . No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. §§1343(3) and (4) provide:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Ill. Rev. Stat. ch. 82, §57, provides:

> Hotel, inn and boarding house keepers shall have a lien upon the baggage and other valuables of their guests or boarders brought into such hotel, inn or boarding house by such guests or boarders, for the proper charges due from such guests or boarders, for their accommodations, board and lodgings and such extras as are furnished at their request.

Ill. Rev. Stat. ch. 141, §3, provides in pertinent part:

> All persons other than common carriers having a lien on personal property by virtue of [ch. 82, §57, *et*

seq.] . . . may enforce said lien by a sale of said property, on giving the owner thereof, if he and his residence be known to the person having such lien, 10 days' notice, in writing of the time and place of such sale, and if said owner or his place of residence be unknown to the person having such lien, then upon his filing his affidavit to that effect with the Clerk of the County Court in the county where said property is situated; notice of said sale may be given by publishing the same once in each week for 3 successive weeks in some newspaper of general circulation published in said county, and out of the proceeds of said sale all cash and charges for advertising and making the same, and the amount of said lien shall be paid, and the surplus, if any, shall be paid to the owner of the property.

Ill. Rev. Stat. ch. 71, §2, provides:

Every hotel proprietor shall have a lien upon all the baggage and effects brought into said hotel by his guests for any and all proper charges due him from such guests for hotel accommodations, and said hotel proprietor shall have the right to detain such baggage and effects until the amount of such charges shall have been fully paid, and unless such charges shall have been paid within sixty days from the time when the same accrued, said hotel proprietor shall have the right to sell such baggage and effects at public auction after giving ten day's notice of time and place of such sale, by publication of such notice in a newspaper of general circulation in the county in which said hotel is situated, and also by mailing, ten days before such sale, a copy of such notice addressed to such guest at his post office address, if known to said hotel proprietor, and if not known, then to his place of residence registered by said guest in the register of such hotel; and after satisfying such lien out of the proceeds of

such sale, together with any costs that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall, within six months after such sale, on demand, be paid by said hotel proprietor to such guest; and if not demanded within six months from the date of such sale, such residue or remainder shall be deposited by such hotel proprietor with the county treasurer of the county in which such hotel is situated, together with a statement of such hotel prorietor's claim, the amount of costs incurred in enforcing the same, a copy of the published notice, and the amount received from the sale of said property so sold at said sale; and said residue shall, by said county treasurer, be accredited to the general revenue fund of said county, subject to the right of said guest or his representative to reclaim the same at any time within three years from and after the date of such deposit with said county treasurer, and such sale shall be a perpetual bar to any action against said hotel proprietor for the recovery of such baggage or property, or of the value thereof, or for any damages growing out of the failure of such guest to receive such baggage or property.

Ill. Rev. Stat. ch. 71, §4c provides in pertinent part:

The word "hotel" within the meaning of this act includes every building or structure kept, used, maintained, advertised, and held out to the public to be a place where lodging, or lodging and food, or apartments, or suites, or other accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which 25 or more rooms are used for the lodging, or lodging and food, or apartments, or suites, or other accommodations of such guests.

STATEMENT OF THE CASE

The named petitioners were residents of the respective defendant hotels located in Chicago, Illinois. They paid their rents on a weekly basis and lived in the hotels continuously for various periods of time ranging from six weeks to one year. All petitioners' personal property, including clothing, cooking and eating utensils, medicines and personal papers, were kept in their rooms, which were used as their permanent and exclusive residences. In each instance, they returned to their rooms to find that the hotel keepers had changed or plugged the locks on the doors of their rooms so that they could not gain admittance to the rooms or access to their personal property. Upon inquiry, the petitioners were told by hotel agents that they would not be allowed to enter their rooms and regain possession of their belongings until they paid alleged rent arrearages. The hotel keepers claimed that their actions were taken pursuant to and authorized by the Illinois Innkeepers' Lien Law, *Ill. Rev. Stat.*, ch. 82, §57 and ch. 71, §2. Attorneys for the petitioners made demands on the hotel keepers for the release and return of the petitioners' personal property. When these demands were refused, this lawsuit was filed on September 15, 1972 in the United States District Court for the Northern District of Illinois, Eastern Division.

This suit was instituted as a plaintiff and defendant class action for declaratory judgment and injunctive relief pursuant to 42 U.S.C. §1983 for deprivation of rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States.[1] The plaintiffs, individually and on behalf of all others similarly situated, sought to have the Court declare unconstitutional and enjoin the operation, execution, and enforcement of the Illinois Innkeepers' Lien Laws, *Ill. Rev. Stat.*, ch. 71, §2 and

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[1] Each of the named plaintiffs also sought damages from the respective defendant hotels for the wrongful taking of their property and violation of their civil rights.

ch. 82, §57, by the defendant class of Chicago-area hotels, for the reasons that: the statutes authorize the deprivation of personal property without notice and a prior hearing, in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States; and they authorize limitless searches of hotel guests' rooms and seizures of their personal property without the consent of the guest and without prior judicial determination of probable cause, in violation of the Fourth Amendment to the Constitution of the United States. Plaintiffs noted in their complaint that a federal court of the same district, in an individual action, *Collins* v. *Viceroy Hotel,* 338 F.Supp. 390 (N.D. Ill. 1972), had declared the subject lien statutes unconstitutional as violative of due process, but that, in spite of that decision, defendants and the defendant class had continued to seize, detain, and sell hotel residents' personal property pursuant to the Illinois Innkeepers' Lien Law, thus making injunctive relief running against the defendant class essential.

The jurisdiction of the Court was invoked pursuant to 28 U.S.C. §§1343(3) and (4), which provide for original jurisdiction in the federal district courts of civil rights suits filed under 42 U.S.C. §1983.

On January 6, 1973, the district court granted leave to intervene as defendants to several of Chicago's large hotels, and on June 5, 1973, the court granted plaintiffs' motion to proceed as a plaintiff and defendant class action.

On September 30, 1974, in response to plaintiffs' motion for summary judgment, the District Court dismissed the action for lack of jurisdiction. Raising the issue of state action *sua sponte,* the Court concluded that the actions of the defendant hotels were not taken "under color of law" within the meaning of 42 U.S.C. §1983. Plaintiffs appealed to the United States Court of Appeals for the Seventh Circuit seeking a reversal of the District Court's decision. On September 30, 1975, the Court of Appeals affirmed the District Court's decision.

REASONS FOR GRANTING THE WRIT

A. THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEAL IS IN CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEAL ON THE SAME MATTER.

Four courts of appeals have considered the question of whether the execution of hotel keepers' or landlords' liens by private persons without the assistance of state officials constitutes "state action" or action "under color of law." Two courts of appeals, the Fifth and Ninth Circuits, have answered this question in the affirmative while two others, the First and the Court below, have found no state action to exist.

In *Hall* v. *Garson,* 430 F.2d 430 (5th Cir. 1970), the Fifth Circuit found state action where a private landlord had entered the dwelling of a tenant to remove the tenant's television set pursuant to a Texas law giving landlords a lien on the personal property of their tenants for unpaid rent. As in the case of the Illinois statute attacked herein, no court order was required to effect the seizure nor was the landlord assisted in any way by a government official. Nevertheless, the Court found that by entering a person's home to seize his property the landlord was performing a function that was by its nature inherently governmental, thereby subjecting the landlord to the strictures of the Fourteenth Amendment.

> . . . [T]he action taken, the entry into another's home and seizure of another's property, was an act that possessed many, if not all, of the characteristics of an act of the State. The execution of a lien, whether a traditional security interest or a quasi writ of at-

tachment or judgment lien, has in Texas traditionally been the function of the Sheriff or Constable. *Id.* at 439.

Since the *Hall* decision was rendered in 1970, the Fifth Circuit has reaffirmed its holding on two separate occasions. In *James* v. *Pinnix,* 495 F.2d 206 (5th Cir. 1974), the Court found no state action in the repossession of an automobile by a secured creditor pursuant to the Uniform Commercial Code, and in *Barrera* v. *Sec. Bldg. and Inv. Corp.,* No. 74-2656 (5th Cir., Sept. 25, 1975), the Court found no state action in a nonjudicial mortgage foreclosure pursuant to a power of sale provision in a deed of trust authorized by a Texas statute. In both cases, the Court distinguished *Hall* on the grounds that *James* and *Barrera,* in contrast to *Hall,* did not involve entry into the debtor's dwelling, seizure of property over which the creditor had no security interest or contractual right to repossess, or a statutory expansion of pre-existing rights.

In *Culbertson* v. *Leland,* No. 73-1749 (9th Cir., October 3, 1975) (attached as Appendix C), a case decided three days after *Anastasia,* the Ninth Circuit, in a two-to-one decision, found state action in the execution of the Arizona Innkeepers' Lien statute, a statute which is virtually identical to the Illinois provisions herein challenged. Judge Weigel, in a separate opinion, concluded that the state had significantly involved itself in the hotel's action for much the same reasons put forth by plaintiffs and rejected by the Seventh Circuit: (1) the statute granted hotel, boardinghouse and roominghouse keepers new powers which they did not have at common law; (2) there was no contractual agreement between the parties giving the hotel keepers the right to seize the residents' property in case of nonpayment, and the purchase of the seized property had not created the original debt; and (3) the seizure

of unsecured property in satisfaction of an unrelated debt is a type of activity which the state ordinarily reserves exclusively to itself. (Appendix C at 24-32).

Judge Ely, separately concurring in the result, followed the rationale of *Hall* in finding the hotel keeper was exercising a function governmental in nature and therefore subject to due process strictures. Quoting the Fifth Circuit's explication of *Hall* in a subsequent decision, he observed that " '[s]uch a taking closely resembles a seizure in satisfaction of a judgment—a function traditionally performed by a Sheriff or other state agent,' " (Appendix C at 35-36), and concluded that the state "has, and must retain, a monopoly" over the exercise of this power. *Id.* at 35. In reaching this conclusion, Judge Ely drew substantial support from this Court's decision in *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974). *Id.* at 36-7.

In *Davis* v. *Richmond*, 512 F.2d 201 (1st Cir. 1975), the First Circuit found no state action in the seizure and detention of personal property pursuant to the Massachusetts Boardinghouse Lien statute. The Massachusetts' statute is similar to the Illinois statutes although it is more limited in its reach and in the powers granted.[2] The Court expressly rejected the reasoning of *Hall* and the arguments which the Ninth Circuit later found persuasive in *Culbertson*. While the Court conceded that the Massachu-

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[2] The Massachusetts' statute extends the inkeepers' common law lien to goods of boarders and lodgers whereas the Illinois lien attaches to all persons living in statutorily defined hotels, including many persons such as the Petitioners themselves who could properly be called tenants. Furthermore, under the Illinois statutes the hotel keeper can sell the goods after sixty days to satisfy the alleged debt without repairing to the courts whereas in Massachusetts the goods can only be sold after notice and a judicial hearing. *Compare Ill. Rev. Stat.*, ch. 71 §2, ch. 141, §3, with *Mass Gen. Laws*, ch. 255, §§26-29.

setts' statute went beyond the common law, the First Circuit surmised that it was "a fairly unremarkable product of the continuing legislative function to define creditors' rights." Thus, the state had not significantly involved itself in the private actions of the boardinghouse keeper by authorizing his actions through a statutory enactment. *Id.* at 203.

The Seventh Circuit's opinion in this case is in direct conflict with the Fifth Circuit's decision in *Hall* and Ninth Circuit's decision in *Culbertson*. The Court below recognied that *Hall* was indistinguishable from the case at bar, but rejected the Fifth Circuit's reasoning: "Fundamentally, we simply disagree with the result in *Hall*." (Appendix B at 18-19). The Seventh Circuit felt that the execution of the Illinois Innkeepers' lien could not be deemed a public function as long as it could be said that, in part at least, some types of liens historically had not been *exclusively* executed by state officers. *Id.* at 35-37. In so doing, the Court rejected the Fifth and Ninth Circuits' determination that the test was whether the statutes had endowed hotel keepers with "powers and functions governmental in nature" regardless of who historically had exercised similar or antecedent liens. *Evans* v. *Newton*, 382 U.S. 296, 303 (1966). *See Hall* v. *Garson, supra* at 439; *James* v. *Pinnix, supra* at 208; *Culbertson* v. *Leland, supra* at 34-36.

Moreover, the Seventh Circuit, citing the First Circuit in *Davis*, concluded that the Innkeepers' lien law and other Illinois statutes, which had concededly expanded the power of hotels, approved and authorized the enforcement of the lien, and granted hotels protected status and aid, had a "minimal" impact on "private ordering" and thus did not significantly involve the state in hotel keepers' actions, even though the Court would have apparently agreed with Judge Weigel's observation in *Culbertson*

that the lien statutes were the defendants "sole authority for the seizure[s], which would not otherwise have been even colorably legal." (Appendix C at 32; Appendix B at 13-15).

In summary then, there is a two-way split between four circuit courts of appeals on the questions presented by petitioners for review.[3] It is clear that the conflict is one that can be effectively resolved only by the prompt action of this Court. Accordingly, this Court should grant petitioners' request for a writ of certiorari.

B. THE SEVENTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Seventh Circuit Court of Appeals has decided that the actions of hotel keepers who seize and detain property of residents kept in their rooms for alleged nonpayment of a bill, pursuant to the authority of Illinois law, are not state action and therefore not circumscribed by the Fourth and Fourteenth Amendments. While this decision is limited to the Illinois Innkeepers' Lien Law, it has nationwide significance. Except for Alaska and South Carolina, all of the states and the District of Columbia

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[3] Except for the District Court's opinion in this case, the lower federal courts have consistently found state action in the execution of landlord and innkeepers' liens. *Klim* v. *Jones*, 315 F. Supp. 109 (N.D. Cal. 1970); *Collins* v. *Viceroy Hotel Corp.*, 338 F. Supp. 390 (N.D. Ill. 1972); *Holt* v. *Brown*, 336 F. Supp. 2 (W.D. Ky. 1971); *Barber* v. *Rader*, 350 F. Supp. 183, 188-89 (S.D. Fla. 1972); *Dielen* v. *Levine*, 344 F. Supp. 823, 824 (D.Neb. 1972); *Adams* v. *Joseph F. Sanson Investment Co.*, 376 F. Supp. 61 (D.Nev. 1974); *Johnson* v. *Riverside Hotel*, No. 74-1544—Civ. WM (S.D. Fla., August 7, 1975). *See also, Blye* v. *Globe-Wernicke Realty Co.*, 33 N.Y. 2d 15, 19-20 (N.Y. Ct. of Appeals 1973).

have innkeepers' lien statutes which are virtually identical to the Illinois' law, wherein the seizure and detention of property for an alleged bill is authorized without judicial order and without prior notice or hearing. In every case, the seizure can be effected by a private person without the aid of a state officer.[4] Furthermore, many states have distress for rent or landlord lien statutes similar to the Texas statute considered in *Hall* which authorize a private landlord to enter the dwelling of his tenant and seize the tenant's property in satisfaction of a claim of past due rent before the tenant has been afforded notice and the opportunity for a hearing to determine the validity of the landlord's claim. The Seventh Circuit de-

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[4] 33 Code Ala. §§29-30; Ariz Rev. Stat., §§33-951, 33-952; Ark. Stat. ch. 11, §§17-1111, 77-1113; Cal. Civil Code, Tit. 3, ch. 2, Art. 4, §1861; Colo. Rev. Stat., §§38-20-102, 104; Gen. Stat. Conn. ch. 847, §49-69; Del. Code, Tit. 25, §3901; D.C. Code, §34-107; Fla. Stat. §713.68, §85.19; Ga. Code §§52-105, 52-106; Haw. Rev. Stat. ch. 507, §§7-8; Idaho Code ch. 18, §§39-1826, 39-1827; Ind. Stat. §§32-8-27-1, 2; Iowa Code §583.1 *et seq.;* Kans. Stat. §36-201 *et seq.*; Ky. Rev. Stat. §376.340; La. Civil Code, Art. 3233; Me. Rev. Stat. Tit. 30, §§2951-52; Code Md. Art. 71, §4; Mass. Gen. Laws ch. 255, §23-29; Mich. Compiled Laws §§427.201-.207; Minn. Stat. §§327.05-.06; Miss. Code §§75-73-15, 75-73-17; Mo. Stat. §§419.060, 419.070; Mont. Rev. Code §§34-103, 104; Neb. Rev. Stat. §§41-124, 125; Nev. Rev. Stat. §§108.480, .490; N. Hamp. Rev. Stat. §448.1; N.J. Rev. Stat. §2A:44-48; N. Mex. Stat. §§61-2-14, 61-3-11; N.Y. Liens Stat. Art. 7, §181, Art. 9, §200 *et seq.*; N. Car. Gen. Stat. §44.30; N. Dak. Code §35-19-01 *et seq.*; Ohio Rev. Code §§4721.04, .05; Okl. Stat. Tit. 42, §39, Tit. 15, §501; Oreg. Rev. Stat. ch. 87, §§87.525, .530; Penn. Stat. Tit. 37, §71-74; Gen. Laws R.I. §34-33-1; S. Dak. Laws §44-11.5; Tenn. Code §64-1701; Tex. Civ. Stat. Tit. 73, Art. 4594, 4595; Utah Code, §§38-2-2, 38-2-4; Vt. Stat. Tit. 13, §2585; Code Va., §43-31; Wash. Rev. Code §60.64.010; W.Va. Code §38-11-5; Wisc. Stat. §289.43; Wy. Stat. §33-249.

cision therefore has nationwide ramifications and in light of the conflict between the circuit courts of appeals on this matter, the questions decided therein should be settled by this Court.

This Court has never ruled on the questions presented for review by the petitioners. In *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974), this Court found that the termination of electric service by a public utility company for nonpayment of bills was not state action where the state had not directly authorized or encouraged the termination. In *Jackson*, however, in contrast to this case, there was no entry into a private dwelling to effectuate the termination, nor was there a direct grant of power by the state to a non-governmental entity. *Jackson*, then, is not dispositive of the instant case.

Accordingly, this Court should grant a writ of certiorari to review the important questions of federal law presented herein.

CONCLUSION

Petitioners respectfully request that this Court issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit to review the judgment of that court entered on September 30, 1975.

Respectfully submitted,

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